Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Review of Dominant versus	)	CC Docket No. 01-337
Non-dominant Telecommunication	)	
Services	)	

COMMENTS OF THE FIBER-TO-THE-HOME COUNCIL

I. EXECUTIVE SUMMARY

1. According to Section 706 of the 1996 Telecommunications Act, the Federal Communications Commission (hereafter referred to as the Commission) has the responsibility to enable and encourage the deployment of advanced telecommunications capabilities in a reasonable and timely manner. Fiber-to-the-home (FTTH) is one of the only broadband solutions that meets this definition of advanced telecommunications capability, does not rely on legacy network elements, and provides the necessary bandwidth for a future-proof, truly broadband infrastructure.

2. FTTH provides an extraordinary increase in bandwidth per network investment dollar than copper or coaxial technologies, yet it is not being deployed by the incumbent local exchange carriers (ILECs) in a reasonable, timely, or significant manner. Numerous ILEC officials have publicly stated that regulation is the most significant barrier to their investment in FTTH broadband solutions.

3. To place all carriers on equal footing in providing the most cost-effective, future-proof, and advanced telecommunications capability possible – FTTH, the Fiber-to-the-Home Council (hereafter referred to as the FTTH Council) recommends that the Commission determine that ILEC-owned or operated FTTH networks are non-dominant. This determination would also allow the Commission to meet its responsibility under Section 706 of the 1996 Telecommunications Act to encourage the deployment of advanced telecommunications capabilities to all Americans. As this determination would

most likely result in the dramatic acceleration of ILEC-owned FTTH networks, it would be prudent for the Commission to review its position in a reasonable number of years to ensure that no single carrier group is dominant.

II. INTRODUCTION

4. These comments are being submitted by the FTTH Council in response to the Notice of Proposed Rulemaking "*In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunication Services*", CC Docket No. 01-337. The FTTH Council is an association of companies working to accelerate advanced broadband throughout America. The FTTH Council has 70 member companies today, a number which has grown every quarter since the Council's inception in July of 2001. The FTTH Council's member companies are listed in Appendix A. It is the FTTH Council's position that investment in FTTH systems by ILECs is being adversely impacted by regulation that is subject to review in this proceeding. The FTTH Council believes the Commission should take immediate action to remove this barrier and to review its position in a reasonable number of years.

III. THE FCC HAS A SECTION 706 REQUIREMENT TO ENCOURAGE DEPLOYMENT OF FTTH

5. It is the FTTH Council's belief that the Commission has an obligation under Section 706 of the 1996 Telecommunications Act to "…encourage the deployment on a reasonable and timely basis of advanced telecommunications capability…"[1] Moreover, "advanced telecommunications capability" is defined by statute as "broadband" capability that can deliver voice, data, and video bi-directionally. The statutory definition states:

> "The term 'advanced telecommunications capability' is defined without regard to any transmission media or technology, as high-speed, switched broadband telecommunication capability that enables users to originate and receive high quality voice, data, graphics, and video telecommunications using any technology."[2]

[1] 47.U.S.C.157 NT, *1996 Telecommunications Act*, Section 706 (1996).

[2] Ibid.

It is the FTTH Council's opinion that FTTH meets this definition of advanced telecommunications capability. FTTH is not only more than capable of providing voice, data, and video bi-directionally today, but it also has the capability to meet future growth in telecommunication bandwidth requirements. Therefore, according to Section 706 of the 1996 Telecommunications Act, the Commission is required to encourage FTTH deployments.

IV. DESPITE NEAR-COST PARITY, ENHANCED REVENUE GENERATION POTENTIAL AND IMPROVED MAINTAINABILITY, FTTH IS NOT BEING DEPLOYED IN A SIGNIFICANT MANNER

6. To date, FTTH has only been deployed in small, rural communities and in select new home developments. Only one ILEC has completed an operational FTTH trial build to date. A list of completed and on-going FTTH projects is listed in Appendix B. Interestingly, ILECs have not made a commitment to mass deployment of FTTH technologies, even in "green field" situations where the technology's cost proves to be competitive with copper or coaxial cable.

7. Additionally, FTTH enables numerous new revenue stream possibilities. According to one recently released report:

> "On a per subscriber basis, FTTH will offer the highest revenue stream due to the wider variety of services that will be supported, as well as the provider's desire to recover the cost of the deployment. ADSL supports the lowest per subscriber revenue due to the lower capacity for video distribution."[3]

8. More surprisingly, ILECs are choosing to deploy copper even with the understanding that the maintenance costs of fiber in the local loop are considerably lower than copper. According to a recent report by Financial Strategies Group, fiber deployed in a FTTH solution has an annual failure rate of .01% while the copper in a digital subscriber line solution has an annual failure rate in the loop of 16.8% to 19%. Including the necessary electronic equipment, the fiber solution fails at an annual rate of 6.76% versus the copper's 24% annual failure rate.[4]

[3] Cahners In-stat, *Master Planned Communities: The Leading Edge for Broadband Services*, p. 47 (Feb, 2002).

[4] Financial Strategies Group, *Analyzing Broadband Technologies*, p. 9 and 15 (June, 2001).

V. REGULATION IS A SIGNIFICANT BARRIER TO INVESTMENT IN FTTH SYSTEMS

9. Regulation has adversely impacted investment in FTTH networks by the ILECs. Representatives from the ILECs have provided public testimony to support this statement. SBC Executive Vice President for Services, Ross Ireland, has affirmed that deployment of the optical network in SBC's region will be affected by "regulatory judgments."[5]

10. Ivan Seidenburg, Verizon's President and Co-CEO, stated:

> "The establishment of a national policy that removes inappropriate regulation from broadband services will result in dramatic increase in broadband availability and usage. In fact, we estimate that the adoption of better public policy would increase the number of additional households and businesses that could receive broadband services from Verizon during the next three years by 50-75% over the number that would receive service if current policies exist."[6]

VI. ILEC-OWNED OR OPERATED FTTH NETWORKS SHOULD BE CONSIDERED NON-DOMINANT

11. The FTTH Council recommends that the Commission find that ILEC-owned FTTH networks are non-dominant. Such a decision would ensure that all competitors are placed on equal footing to construct new advanced networks by eliminating what is viewed as the single largest barrier to deployment of FTTH networks by ILECs. However, if the Commission decides not to grant such relief, it should, at a minimum, determine that ILEC-leased FTTH networks are non-dominant. This determination would allow third party companies to invest in FTTH networks and have the freedom to enter into exclusive agreements for services with any carrier. Either determination would result in the dramatic acceleration of FTTH in America and would require the Commission to review its position in a reasonable number of years.

VII. CONCLUSION

12. The Commission has an obligation under Section 706 of the 1996 Telecommunications Act to encourage deployment of FTTH. However, despite near-cost parity, enhanced revenue generation

[5] Liane H. LaBarba, *Pronto, part deux*, TELEPHONY at p. 14-15 (May 14, 2001).

[6] Ivan Seidenburg, President and Co-CEO of Verizon in a letter to Andy Grove, CEO and Chairman of Intel (July 5, 2001).

potential and improved maintainability, deployment of such capability today is being retarded by unnecessary regulation.

13. Competitive FTTH networks far outnumber ILEC-owned FTTH networks. Furthermore, ILEC networks do not have a competitive advantage in deploying FTTH solutions, as ILEC legacy networks are not capable of supporting modern FTTH deployments.

14. Since FTTH deployments require operators to develop and deploy new, non-legacy network equipment and new, non-legacy fiber optic cable, no carrier should be considered dominant in this space. All FTTH network operators should be allowed to compete on equal footing with regard to regulation.

15. It is the FTTH Council's position that the Commission should encourage the deployment of advanced telecommunications capability by determining that ILEC-owned or operated FTTH networks are non-dominant. Declaring FTTH networks as non-dominant will help fulfill the FCC's Section 706 obligation to enable and encourage deployment of advanced telecommunications capability while preserving the pro-competitive spirit of the Telecommunications Act.

Respectfully submitted on behalf of our members,

THE FTTH COUNCIL

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ATTACHMENT A

Listing of the FTTH–Council member companies:

3M	Adesta Communications
AFL Telecommunications	Agere Systems
Alcatel	AllOptic
Alpha Technologies	AMD Telemedicine
American Power Conversion	Anexion
Arris	Atlantic Engineering Group
Bechtel Telecommunications	BroadbandConnect
Broadcom Group	Charles Machine Works
Chelan County Public Utility District #1	Cisco Systems
City of Green River	CommScope
CopperCom	Corecess
Corning Incorporated	DTI Consulting
DuPont	DynamicCity Metronet Advisors
Eagle Broadband	Essex Corporation
FTTX Systems	FiberCore
Fiberworks	Financial Strategies Group LLC
GLA Network Technologies	Gould Fiber Optics
IMC Networks	Irdeto Access
iWired	KRONE Optical Systems
Luminent Incorporated	Marconi
MCSi	Motorola BCS
NEC Eluminant Technologies	Neptec Optical Solutions
Network Telco	Nexans
Oki Network Technologies	OFS Fitel
Optical Solutions Incorporated	Orius Corporation
Paceon	Philips Digital Networks
Pirelli Communications Cables & Systems NA	PurOptix
SBC Communications	Samsung Electronics
SandStream Communications & Entertainment	Science Applications International Corporation
Scientific Atlanta	Sumitomo Electric Lightwave
TDK Corporation	Team Fishel
TelPlexus	Tropic Networks
TVC Communications	Tyco Electronics
Volex Incorporated	Wave7Optics
World Wide Packets	Zero dB

ATTACHMENT B

Listing of published completed or planned FTTH deployments:

Project or Company	**Market***
Atlanta, GA (Bell South)	ILEC
Bear Creek Homes (Meridian, Idaho)	CLEC
Brambleton, Virginia	CLEC
Bristol, Virginia	Muni
Chattanooga PUD, Tennessee	Utility
Chelan County, Washington	Muni
City of Palo Alto, California	Muni
Daniel Island Media Company (Charleston, SC)	CLEC
Evansville and Newburgh, Indiana	CLEC
Evermoor (Rosemount, Minn)	CLEC
Gervais Telephone Company	Ind Telco
Grand Videre Estates (Janesville, Wisconsin)	CLEC
Grant County PUD, Washington	Utility
Guthrie Telecommunications Network	CLEC
HomeFiber	CLEC
Hometown Solutions	CLEC
Huxley Cooperative Telephone Company	Ind Telco
Kutztown, Pennsylvania	Muni
Longmont, Colorado	Muni
Meridian, Idaho	Muni
Mission Bay, California (SBC)	ILEC
Nexeon	CLEC
North Pointe, Texas (ClearWorks)	CLEC
Packet Homes, Inc.	CLEC
Piedmont (Haymarket, Virginia)	CLEC
Provo City Power, Utah	Muni
Renar Homes	CLEC
Rock Creek (ClearWorks)	CLEC
Royal Oaks Estates	CLEC
Rural Telephone Service Company	Ind Telco
Rye Telephone Co.	CLEC
Sierra Pacific Communications	Utility
Sprint	IXC
Stone Gate, Texas (ClearWorks)	CLEC
Surewest Communications	Ind Telco
WINfirst	CLEC

*** Home developer owned networks are listed as CLECs**